IRS INTERNATIONAL TAX FORUM

For the Tax Practitioner Fall 1996

I am pleased to announce that the **International Tax Forum** is now available electronically! You can download our newsletter from either the Internet or the Internal Revenue Information Services (IRIS) electronic bulletin board.

As I mentioned in an earlier issue, we have been looking for ways to reach out to tax practitioners with more timely information. Electronic transmission is almost instantaneous, compared to the month or more lag time required for publishing and mailing individual newsletter copies. In the future, as access to the Internet becomes more universal, we plan to switch over entirely to electronic transmission. Elimination of the hardcopy mailout would result in a considerable savings in publication and postage costs, at a time when budget reductions require us to curtail spending in many areas of our operations.

We invite you to try it out. Instructions for downloading the newsletter file using the Internet and the IRIS bulletin board follow in this issue. We think you will find electronic transmission to be a more convenient and timely way to receive this newsletter.

We would be interested in receiving your comments on the electronic edition and the impact of possibly eliminating our hardcopy mailout. Please send them to our Public Affairs Officer at: Roderic.P.Young@ccmail.irs.gov; fax a message to him at 202-874-5440; or write to us at the address listed on the last page of this publication.

John T. Lyons

Assistant Commissioner (International)

The Forum Goes Electronic

This issue, and future issues, of the **International Tax Forum** may be downloaded electronically from the IRS "home page" on the Internet or from the Internal Revenue Information Services (IRIS) electronic bulletin board.

To view the newsletter via the Internet, simply access the "IRS Digital Daily" at http://www.irs.ustreas.gov. Then click on the "IRS Newsstand," select "International Tax Forum," and choose "Save File" to send the **itf.pdf** file to your hard drive or disk. Be sure to read the section on "File and Form Retrieval Help." It includes guidance for downloading Adobe Acrobat software directly from the IRS "home page." You will need the software to "read" the PDF file, enabling you to bring the newsletter up on your screen and print it out. The software is provided free of charge.

To access the newsletter from the IRIS electronic bulletin board, dial 703-321-8020 from your computer modem, select "Individual Income Tax Information," select "International Issues," and then follow the instructions for downloading the file. To obtain the Adobe Acrobat software from the IRIS bulletin board, select the "Help" menu and choose "Reader for PDF Files."

Temporary ID Numbers No Longer Valid

Individuals who have been using temporary taxpayer identification numbers assigned by an IRS Service Center will no longer be able to use those numbers on their U.S. tax returns beginning in January. The temporary numbers look similar to SSNs and always begin with the number nine. As we explained in our last issue, individuals required to file U.S. tax returns who do not have Social Security numbers (SSN) and cannot obtain SSNs must file IRS Form W-7 to obtain an Individual Taxpayer Identification Number (ITIN).

ITINs are also required for those individuals if they are claimed as a dependent of a U.S. person on his or her tax return, the spouse of a U.S person who elects to file a joint U.S. tax return, or are filing a U.S. tax return only to claim a refund.

If you have clients who have been filing their returns using a Service Center assigned identification number, please alert them to the need to file a Form W-7, Application for Individual Taxpayer Identification Number, as soon as possible. As of January 1, 1997, tax returns filed without valid SSNs or ITINs will not be processed.

Tax forms and other materials can be downloaded from the IRS "home page" on the Internet and the IRIS bulletin board — see item headed, "The Forum Goes Electronic," for information about accessing these services. Forms W-7 are also available from IRS offices and most U.S.embassies and consulates.

Agenda for IRS-GWU Institute

The Ninth Annual Institute on Current Issues in International Taxation, cosponsored with the George Washington University, will be held December 12 and 13, at the J.W. Marriot Hotel in Washington, D.C. Designed for professionals in international law, the Institute will cover::

- sessions with U.S., Mexican, and Canadian Competent Authorities
- treaty issues
- collateral consequences of check-the-box
- a U.S. multinational update
- an "Ask the IRS" session
- regulatory guidance

- intellectual property
- withholding regulations.

IRS Commissioner Margaret Richardson will be a featured luncheon speaker. For more information, and to register for attendance, contact The George Washington University, Office of Conferences and Institutes, 2029 K Street, N.W., Suite 700, Washington, D.C. 20006, or call (202) 973-1110.

Treaties Affect Taxability of Social Security Benefits

Nonresident alien individuals who receive U.S. social security benefits generally have U.S. income tax withheld from their benefit checks by the Social Security Administration — 85 percent of Social Security or equivalent tier 1 railroad retirement benefits paid to a NRA are subject to a 30 percent tax rate. However, under tax treaties with Israel, Egypt, Japan, Malta, Romania, Italy, Germany and the United Kingdom, U.S. social security benefits received by residents of those countries are exempt from U.S. tax.

The U.S.-Canada treaty was recently changed so that, beginning in January 1996, the Social Security Administration now deducts Federal income tax from the benefit checks of non-U.S. citizens living in Canada.

In general, U.S. citizens and residents, no matter where they live in the world, are taxed on a portion of their U.S. social security benefits if their total income, including social security, exceeds certain base amounts. However, under pertinent treaty provisions, residents of Israel and Germany, including U.S. citizens, are not subject to U.S. tax on their U.S. social security benefits.

A worksheet for calculating taxable social security benefits is included in the Form 1040 tax package.

Publication 1212 and OID Reporting Compliance

A debt instrument which bears no interest, or bears interest at a rate lower than the current market rate, will usually be issued at less than its face amount. This discount, known as original issue discount (OID), is taxable as a form of additional interest. OID has to be reported as it accrues , whether or not payments are actually received. Among the various types of discounted debt instruments are corporate bonds, municipal bonds, certificates of deposit, stripped bonds and collateralized debt obligations. Certain debt instruments are excepted from the OID rules.

The issuer of a publicly offered debt instrument that has OID is required to file a Form 8281, *Information Return for Publicly Offered Original Issue Discount Instrument* with the IRS Detroit Computing Center within 30 days of issuance. The penalty for late filing or failure to file is one percent of the issue price, up to a maximum of $50,000.

Publication 1212, *List of Original Issue Discount Instruments,* is based primarily on information supplied by issuers on Forms 8281. This list helps brokers and other middlemen identify publicly offered OID debt instrument — which they hold as nominees for the true owners — so they can comply with their responsibility to file information returns on Forms 1099-OID and 1099-INT. Publication 1212 is also used by owners of OID instruments to help determine the amount of OID to report on their income tax returns.

Information reporting assists taxpayers in properly reporting their income and is a major tool in IRS efforts to promote voluntary compliance with the tax laws. To improve Form 8281 reporting compliance, the IRS will be working with representatives of the the securities industry to make sure that OID bond issuers understand their reporting responsibilities. In addition, the IRS will be monitoring the filing of Forms 8281 and asserting penalties where appropriate.

For further information, refer to Publication 1212 and the Form 8281 filing instructions, or contact Mr. Cary Russ of the IRS Financial Products and Transactions Program at (847) 581-2010.

Disclosures to a Third Party

The following article was published in the summer "hardcopy" issue of the ITF, but was incomplete. It did not appear at all in the edition that was made available electronically.

Tax returns and return information are confidential and may not be disclosed by an officer or employee of the United States, except as described in section 6103 of the Internal Revenue Code. Within these rules it has long been IRS policy to permit disclosure to a third party brought along by a taxpayer to a conference or interview with IRS. The third party might be a friend, witness, or translator. Such disclosures are based on the taxpayer's expressed or implied consent and can be made only in the taxpayer's presence. They are generally permitted without requiring the taxpayer to execute a written waiver. A consent to disclose, however, is not an allowance for practice before the IRS.

Estate Tax Provisions of the 1995 Canadian Protocol

The new U.S.-Canada tax treaty contains estate tax provisions that differ significantly from those normally found in estate tax treaties. In addition, the provisions have retroactive effect — they apply to estates of decedents who died after November 10, 1988. Here is a summary of the major provisions:

Charitable deduction — A charitable deduction is now generally allowable on Form 706NA returns for transfers to Canadian charities of assets subject to U.S. tax in estates of deceased Canadian citizens and residents.

Pro-rata unified credit — Estates of Canadian citizens and residents may now claim a pro-rata unified credit on Form 706NA returns , but the gross estate outside the U.S. must be substantiated. The pro-ration formula is the gross estate subject to U.S. taxation, divided by the gross estate worldwide, and multiplied by the unified credit of $192,800.

Marital credit — A marital credit is now allowable on all U.S. estate tax returns with respect to bequests to Canadian spouses. This credit cannot exceed the allowable unified credit. It is not an unlimited marital deduction. The executor must elect the treaty benefit and waive Qualified Domestic Trust (QDOT) rights. The return must be filed by the same date as set for the QDOT election. The credit cannot exceed the U.S. estate tax attributable to property that would have qualified for a marital deduction if the surviving spouse had been a U.S. citizen.

Treatment of trusts — The Canadian exemption from the Canadian deemed capital transfer tax is extended to some U.S. spousal trusts.

Credit for U.S. estate tax — A credit may be claimed against the Canadian deemed capital transfer tax for U.S. federal and state estate tax paid on U.S.-situated assets owned by a decedent.

Credit for Canadian deemed capital transfer tax — A credit is allowable on Form 706 tax returns for the Canadian federal and provincial deemed capital transfer tax on assets situated outside the U.S. under Internal Revenue Code situs rules.

"Small estate" exemption — Unless the worldwide assets of a Canadian citizen and resident exceed $1,200,000, the only assets subject to U.S. estate tax on Form 706NA returns are U.S. real estate.

Claim for refund — Applicable to all U.S. estate tax returns, claims must be filed within the time limits set by the Code, or if later, one year from the date the Protocol entered into force — November 9, 1995.

Forms for Russian Federation Certification

The Russian Federation has issued documents numbered 1011DT, 1012DT and 1013DT for use by their tax authorities in connection with claims for refund or exemption of Russian tax under the U.S.-Russian Federation Income Tax Treaty. Foreign tax authorities generally require — as proof of entitlement to treaty benefits — certification from the IRS that an applicant filed an income tax return as a U.S. citizen or resident.

Applicants requesting U.S. certification for treaty purposes should supply the appropriate taxpayer information on the Russian Federation forms and submit them to the Director of the IRS Philadelphia Service Center, along with all other information necessary to apply for U.S. Form 6166 certification.

Official Russian Federation forms can be obtained from the foreign payer or from Russian Federation tax authorities. Taxpayers may refer to IRS Publication 686, *Certification for Reduced Tax Rates in Tax Treaty Countries*, for further information and instructions for requesting U.S. certification.

Call TELE-TIN for Employee ID Numbers

Taxpayers living in U.S. possessions and abroad may call the new TELE-TIN number at the IRS Philadelphia Service Center to obtain an Employer Identification Number (EIN) using the Form SS-4. The number to call, between the hours of 8:30 a.m. and 8 p.m. EDT, is 215-516-6999.

If you would rather fax your request, the number is 215-516-3990. The Service Center can fax a response, but will do so only if the cover sheet specifically requests a return fax and is signed by an authorized party, e.g., the president of the corporation or an approved representative. You may include a Power of Attorney, Form 2848, with your Form SS-4 submission. Fax access is available 24 hours a day, seven days a week.

Publication 1: Revised, Shortened and Simplified

Taxpayers receiving initial correspondence and notices related to their tax returns and accounts will also receive a copy of the newly revised Publication 1, Your Rights as a Taxpayer. This publication has been greatly simplified as part of IRS' on-going efforts to make tax forms, publications other documents easier-to-use and understand. Also featured is a new declaration of taxpayers' rights, highlighting the most important rights taxpayers have when doing business with the IRS.

Like the earlier version of Publication 1, the revision explains taxpayer rights in the areas of examination, appeals and collection processes, and details procedures for claiming refunds and obtaining help from the Problem Resolution Office.

The new two-page Pub. 1 is available at most IRS offices and may be ordered from the IRS Distribution Center, P.O. Box 85074, Richmond, VA 23261-5074, USA.

Bank Interest Paid to Canadian Residents

Final regulations have been issued to require that banks paying interest on deposits by Canadian residents at a branch in the U.S. report that income both to the IRS and to the investor on a Form 1042-S. The information furnished to the IRS will be provided to the Canadian tax authorities under the U.S.-Canada income tax treaty.

This change will allow the IRS to reciprocate on bank deposit information that Canada has long been providing to the IRS under treaty provisions regarding U.S. persons with bank accounts in Canada. These regulations, proposed in 1988, are effective for payments made after December 31, 1996, with respect to Forms W-8, *Certificate of Foreign Status,* furnished after that date. A Canadian resident making a deposit of funds at a U.S. branch of a bank must furnish a Form W-8 to the bank and the form must be renewed every three years.

Compliance Study Released

More than 99 percent of wage income is correctly reported to the IRS, but less than 70 percent of net income earned by unincorporated businesses is, according to a study of 1992 tax behavior recently released by the IRS.

The study echoes earlier data that show individuals fail to voluntarily pay 17 percent of taxes due on time — or about $95 billion each year. The study shows hign compliance where there is withholding or information reporting and substantially lower compliance in other areas.

"We are determined to raise the compliance rate and make sure that every taxpayer pays what's owed," said IRS Commissioner Margaret Milner Richardson in releasing the study. "The majority of taxpayers who pay what they owe on time have a right to expect the others will do likewise. That's what fairness is all about."

Copies of the study — Publication 1415, "Federal Tax Compliance Research: Individual Income Tax Gap Estimates for 1985, 1988, and 1992" — are available from the IRS Compliance Research Office, CP:R:R, 1111 Constitution Ave., N.W., Washington, D.C. 20224.

PRO to Pro

The Taxpayer Bill of Rights 2 (TBOR2) was signed into law by the President on July 30, 1996. It amplifies and extends provisions of the prior Taxpayer Bill of Rights. As reported in this column in the spring issue, many of the provisions of the then pending TBOR2 legislation were administratively adopted by the Treasury and the IRS (see Announcement 96-5, which appeared in IRB 1996-4, dated January 22, 1996).

TBOR2 gives the Taxpayer Ombudsman expanded authority, higher stature and greater independence. Renamed Taxpayer Advocate, the position is elevated to the same rank as chief counsel and the incumbent has the authority to make independent reports to Congress without prior review by IRS or Treasury officials. The Taxpayer Advocate also is provided with expanded powers to resolve taxpayer problems.

The new law requires the Taxpayer Advocate to report to Congress concerning the Advocate's objectives for the next calendar year and activities during the previous fiscal year. These reports are due in June and December each year.

Among the other changes mandated by the new law:

- The time allowed for taxpayers to respond to notices from the IRS is increased from 10 to 21 days.
- As a general rule, the law prohibits the effective dates of new regulations from being any earlier than the date the proposed regulation is published in the Federal Register.
- Issuers of information returns (eg. Forms 1099, W-2) are required to list the telephone number of the person at the com-

pany who can correct any problem with the information provided to the taxpayer and the IRS.

• The law gives the IRS authority to return seized property in a variety of situations.

• Taxpayers who have been victims of "reckless" collection actions by the IRS are able to sue the government for up to $1 million in damages.

• Taxpayers who win cases against the IRS will find it easier to get reimbursed by the government for attorney fees and certain other court costs.

Relief Announced for New Electronic Depositors

In a recent news release, the IRS announced relief for the 1.2 million businesses required by law to begin depositing their federal taxes electronically by January 1, 1997. According to Commissioner Richardson, the IRS will not impose any penalty on these new depositors for failure to begin making deposits electronically through the Electronic Federal Tax Payment System (EFTPS) until after July 1, 1997.

"We are very sensitive to the concerns raised by a number of taxpayers about their ability to meet the January 1st date," said Richardson. "By postponing the penalty, businesses will have additional time to continue making federal tax deposits with traditional paper coupons while they learn more about EFTPS and set up procedures to use the new system."

EFTPS is a nationwide federal tax payment system that links financial institutions, taxpayers and the IRS. Businesses can pay their taxes by transferring money electronically from their bank accounts directly to the U.S. Treasury. Once enrolled in EFTPS, an employer may initiate electonic payments with as little as a telephone call or by using a computer. Employers will no longer have to worry about bringing their checks and paper deposit coupons to designated banks to pay their taxes.

Under the law, businesses that had more than $50,000 of federal employment tax deposits in 1995 must begin paying their taxes electronically by January 1, 1997. the IRS recently sent letters and forms needed to enroll in EFTPS to the 1.2 million businesses that must begin making electronic payments in January 1997. The IRS will continue to work with these taxpayers to explain the EFTPS procedures.

Simpler Tax Forms for 1996

The IRS recently released Publication 1407, the advance proof package of 1996 tax forms. In its continuing effort to simplify tax filing, the IRS has eliminated the checkboxes for being claimed as a dependent, the tax computation method used and Form 1099 withholding, along with Form 1040's line for recapture taxes. These deletions shorten Form 1040 by three lines.

Taxpayers who want their refunds sent directly to their bank accounts will not need a separate Form 8888 as they did this year. Instead, they will put the necessary account information on their Forms 1040, 1040A, or 1040EZ. This direct deposit information is the only new item to appear on each of the basic tax forms.

Two changes to Schedule C-EZ will enable about 400,000 small business owners to join the 3 million who already use this simplified form to report their profits. The IRS removed the $25,000 gross receipts limitation and increased the business expenses limit to $2,500.

Publication 1045, *Information for Tax Practitioners*, is mailed annually to practitioners who order it by submitting Form 3975, *Tax Practitioner Annual Application*, to the IRS Distribution Center. This mailout is not automatic, **you must resubmit Form 3975 each year or you will not receive Publication 1045.** The package includes blanks for tax forms, instructions, and publications. It also contains information on how to order forms and how to be placed on the mailing list, as well as IRS regulations relating to tax return preparers. Requests should be sent to Eastern Area Distribution Center, P.O. Box 27322, Richmond, VA 23261, USA. **Please note that the only way to get Package X is through the order form, 3975, in Publication 1045.**

International Tax Forum, a quarterly publication of the office of the Assistant Commissioner (International), is available on request by writing to: Internal Revenue Service, Assistant Commissioner (International), Attn: CP:IN:D:CS:PAO, Prom. Level, 950 L'Enfant Plaza SW, Washington, DC 20024, USA.

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